TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~258~~ 109

SAMUEL E. RANKIN, PLAINTIFF IN ERROR,

vs.

THE STATE OE TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED FEBRUARY 15, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 258.

SAMUEL E. RANKIN, PLAINTIFF IN ERROR.

vs.

THE STATE OE TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

INDEX

	Original.	Print.
Writ of error	*A*	1
Caption of court	1	1
Indictment	4	3
Plea	9	5
Replication	13	7
Replication	15	8
Demurrer	16	8
Exhibit A	17	8
Exhibit B	20	10
Exhibit C	21	10
Special Order No. 206	22	10
Acquittal	26	12
General Order No. 70	28	13
Bill of exceptions	34	16
Bill of costs	49	22
Order recognizance	52	23
Cause remanded	56	25
Writ of error granted	58	26
Petition for writ of error	59	26
Writ of error allowed	63	28
Opinion of Supreme Court	64	28
Bill of costs	83	35
Clerk's certificate	83	36

a UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Supreme Court of the State of Tennessee greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Tennessee, plaintiff in error, and Samuel E. Parker, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Samuel E. Rankin, as by complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court, the 1st Monday of December, in the year of our Lord one thousand and sixty-six.

M. L. HALL,
Clerk of the Circuit Court of the United States
for the eastern district of Tennessee.

Allowed by—

J. O. SHACKELFORD,
Presiding Judge of the Supreme Court of Tennessee.

I hereby waive the insurance and service of a citation on the within writ of error.

THOS. E. CHAMPION,
Att'y General of the State of Tennessee, pro tem.

Endorsed. Supreme Court U. S. No. 422. Writ of error. The State of Tennessee *vs.* Samuel E. Rankin. Issued November 2nd,

1867. M. L. Hall, clerk of the U. S. Circuit Court for the eastern district of Tennessee. Filed Nov. 2d, 1867. M. L. Patterson, cl'k. Filed Mar. 16th, '68.

1 STATE OF TENNESSEE:

Be it remembered, that at regular term of the Supreme Court for the State of Tennessee, open and held for the eastern division of the State, at the court-house in Knoxville, on the second Monday, being the 9th day of September, 1867, (one thousand eight hundred and sixty-seven,) there was present and presiding on the bench the Honorable Sam. Milligan, one of the judges of said court, the other two judges not appearing, the court was opened and adjourned until to-morrow morning 10 o'clock.

SAM. MILLIGAN.

TUESDAY, *September 10th*, 1867.

Court met pursuant to adjournment. Present and presiding, the Hon. Alvin Hawkins, Hon. Sam. Milligan, and the Hon. J. O. Shackelford, judges of the Supreme Court, &c.

2 *This is a copy of index to record in the Circuit Court.*

INDEX

Caption of court, page 1
Indictment 2
Plea 9
Replication 13
" 15
Demurrer 16
Exhibit "A" 17
" B 20
" C 21
Spec. order, No. 206 22
Bill of exceptions 26
Caption of court 40
Demurrer sustained 42
Jury and recognizance 43
Jury and respite 44
Appeal to S. C. 45
Motion for a new trial 47
Set aside recognizance 48
Bill of costs 49
Certificate of office 51

3 THE STATE OF TENNESSEE:

Be it remembered, that at a regular term of the Circuit Court opened and held for the county of Jefferson, at the court-house in Dandridge, within the second judicial circuit, on the second Monday of August, A. D. 1865, being the 14th day of said month, present and

presiding the Hon. James P. Swann, one of the judges of the Circuit Courts of Tennessee, and being assigned by law to hold the Circuit Courts of the second judicial circuit of said State, the following proceedings were had, to wit :

N. B. Swann, high sheriff of Jefferson county, returned here into open court the State's writ of venire facias to him directed, whereby it appears that the following persons have been duly designated and appointed jurors by the County Court of said county to the present term of this court, to wit: Thomas Hodges, Isaac A. Duncan, David Grant, John Ellison, James M. Hill, Thomas A. Hill, John North, Samuel P. Hammer, William Echel, Alexander A. Sharp, Alexander R. Meek, James A. Caldwell, Jacob Dick, A. J. Ballenger, Robert Caldwell, Isaac Newman, James O. Tattsworth, William H. Boles, Alfred Carter, Moses Skeen, John C. Tate, Amos Holloway, B. W. Smith, Robert P. Sharp, Guy Ellis, William Courtney, and
4 Peter Smith, all good and lawful men of said county, out of whom the court proceeded to elect a grand jury, when were elected, to wit:

1, Alexander R. Meek; 2, Wm. H. Eckel; 3, John North; 4, Alfred Carter: 5, James O. Tattsworth; 6, Amos Hollaway; 7, Wm. H. Boles; 8, Wm. Courtney; 9, Guy Ellis; 10, I. A. Duncan; 11, Thomas Hodges; 12, Moses Sceen; 13, Isaac Newman, of whom the court appointed Wm. H. Eckel foreman, who, together with the jurors elected, were sworn according to law, and received their charge from the hon. court and, retired to consider of their presentments.

Indictment.

TUESDAY, *August* 15th, 1865.

THE STATE *vs.* JAMES BELL, SAMUEL E. RANKIN, JOB POWEL, JACOB LETCHER, PLEASANT M. RIGGS, JOHN BIDDLE, JOHN JAMES, ISAAC FRAZIER, PEYTON RUTHERFORD, BENJAMIN LOCKARD, MONROW HOOPER, JOSEPH PARSONS.	Murder.

5 Came the grand jury in a body into open court, headed by their foreman, with an indictment against the defendants for murder, which is in the words and figures following, to wit:

Circuit Court, August term, 1865.

THE STATE OF TENNESSEE, *Jefferson County*:

The grand jurors for the State of Tennessee, being duly summoned, elected, empanelled, sworn, and charged to inquire for the body of the county of Jefferson, State of Tennessee, upon their oaths aforesaid, present: That James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac

Frazier, Peyton Rutherford, Benja. Lockard, and Monrow Hooper, yeoman, &c., late of said county, on the first day of June, eighteen hundred and sixty-five, with force and arms, in the county of Jefferson aforesaid, in and upon the body of John Thornhill, in the peace of the State then and there being, unlawfully, willfully, maliciously, felloneously, deliberately, premeditately, and of their malice aforethought, an assault did make; and that the said James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockhart and Monrow Hooper, certain pistols of the value of three hundred dollars, then and there charged with gunpowder and leaden bullets,
6 which said pistols they the said James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockhart, and Monrow Hooper, in their right hands then and there had and held, then and there unlawfully, willfully, maliciously, feloneously, deliberately, premeditately, and of their malace aforethought, did discharge and shoot off, to, against, and upon the said John Thornhill; and that the said James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockard and Monrow Hooper, discharged and shot off as aforesaid, then and there unlawfully, wilfully, maliciously, felonecously premeditately, deliberately, and of their malice aforethought, did strike, penetrate, and wound him, the said John Thornhill, in and upon the right side of the head, on the left side of the neck, on the right side, and on the left breast of him, the said John Thornhill, giving to him, the said John Thornhill, then and there with the leaden bullets aforesaid, so as aforesaid discharged and shoot out of the pistols aforesaid, by the said James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockhart, and Monrow Hooper, in and upon the right side of the head, on the left side of the neck, on the right side, and on the left breast of him, the said John Thornhill, divers mortal wounds, each of the depth of six inches, and breadth of half an inch, of which said mortal wounds he, the said John Thornhill, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockart, and Monrow Hooper, him, the said John Thornhill, in the manner and by the means aforesaid, unlawfully, willfully, maliciously, feloneously, by deliberately, premeditately, and of their malice aforethought, did kill and murder in the first degree, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State. And the jurors aforesaid, upon their oaths aforesaid, do further present, that one Peyton Rutherford, Joseph Parsons, late of the county of Roan, State aforesaid, not having the fear of God before their eyes, but being seduced by the instiga-
8 tion of the devil, before the felony and murder aforesaid, by the aforesaid James Bell, Samuel E. Rankin, Job Powel, Jacob

Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockhart, Monrow Hooper, in manner and form aforesaid, done and committed; that is to say, on the twenty-fifth day of May, eighteen hundred and sixty-five, the aforesaid James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockart, and Monrow Hooper, in the county of Roane aforesaid, State aforesaid, to do and commit the felony and murder aforesaid, in manner and form aforesaid, unlawfully, willfully, maliciously, deliberately, premeditately, and of their malice aforethought, did stir up, move, abet, council, procure, and command, contrary to the statute in such case made and provided, and against the peace and dignity of the State.

JAMES MEEK, *Attorney General.*

Endorsed: A true bill. William H. Eckel, foreman of
9 grand jury. Indictment. The State *vs.* James Bell, Samuel E. Rankin, Job Powel, Jacob Letcher, Pleasant M. Riggs, John Biddle, John James, Isaac Frazier, Peyton Rutherford, Benjamin Lockart, Monrow Hooper, and Joseph Parsons. Murder. Prosecutor, Richard Thornhill. Richard Thornhill, Joseph Jones, sworn in open court and sent to the grand jury, 14th August, 1865. S. S. McCrustion, clerk.

Plea.

STATE OF TENNESSEE
vs.
SAMUEL E. RANKIN, } Indictment for murder.

And the said Samuel E. Rankin, in his own proper person, comes into court here, and, having heard the said indictment read, saith that the said State ought not further to prosecute the said indictment against him, the said Samuel E. Rankin, because, he says, that heretofore, to wit, on the 1st day of June, 1865, at, to wit, in the county and State aforesaid, and in the military district of East Tennessee, he was in the military service of the United States, then and there being first lieutenant of Co. "B," 9th Tennessee cavalry, and being
so in the service was bound to obey all lawful orders of his
10 superiors, and was amenable to all pains and penalties by the law inflicted for violations of duty, and was subject to the jurisdiction of the military courts and general courts-martial established by the laws of the United States for the discipling and punishing of offenders against law who were in the service of the United States, then and there existing and being an insurrection and civil war in said military district. And the defendant avers that afterwards, to wit, on the 5th day of Oct., 1865, in the city of Chattanooga, in obedience to General Orders No. 206, dated at Chattanooga, Tenn., Sept. 19th, 1855, a general court-martial was convened and setting for the military district of East Tennessee, of which Major O. M. Gross, 1st U. S., C. A., Heavy, was president, and

that he, the said Samuel E. Rankin, was then and there arragned and put upon trial upon the following charge and specification, to wit:

Charge—Murder.

"Specification.—In this: that the said Samuel E. Rankin, 1st lieutenant Co. "B," 9th Tennessee cavalry, did willfully, maliciously, and feloniously, and of malice aforethought, kill and murder,
11 or cause to be killed and murdered, in the first degree, by shooting, or causing to be shot, one John A. Thornhill, a citizen of Jefferson county, State of Tennessee, on the 24th day of June, 1865." Said court-martial then and there, under and by virtue of the laws of the United States, then and there having competent power and authority to try all officers and soldiers in the service of the United States for murder and other crimes committed whilst so in the service, and then and there having jurisdiction and cognizance of the person of the defendant, the civil war and public danger and insurrection aforesaid, then and there continuing and existing in said military district, and, having such jurisdiction and authority, proceeded to try said defendant, Samuel E. Rankin, upon said charge and specification upon the merits, in accordance with the laws and usages of said court. The said defendant having then and there pleaded to said charge and specification not guilty, upon which trial said court, having maturely considered the evidence, found the defendant, Samuel E. Rankin, 1st lieutenant co. "B," 9th Tennessee cavalry, not guilty, and therefore did honorably acquit him, the said Samuel E. Rankin, 1st lieutenant co. "B," 9th Tennessee
12 cavalry, of said charge of murder, said court then and there having full power and authority to render said judgment, which said judgment still remains in full force and effect, and not in in the least reversed or made void.

And the said Samuel E. Rankin, in fact, saith that he, the said Samuel E. Rankin, and the said Samuel E. Rankin, 1st lieutentant co. B, 9th Tennessee cavalry, so charged, tried, and acquitted, as last aforesaid, are one and the same person, and not another or different person; and that the murder, of which he, the said Samuel E. Rankin, 1st lieutenant co. B, 9 Tennessee cavalry, was charged, tried, and acquitted as aforesaid, and the murder, of which he is indicted, are one and the same murder and other and different murders; and this, the said Samuel E. Rankin, is ready to verify, wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the premises in the present indictment specified.

SAMUEL E. RANKIN.
BARTON & McFARLAND, *Atto.*

Endorsed: Filed Aug. 13th, 1865. S. S. Cuistion, clerk.

13 State of Tennessee, Circuit Court, Jefferson county.

Replication.

THE STATE OF TENNESSEE } Indictment for murder.
vs.
SAMUEL E. RANKIN.

And now comes James M. Meek, who prosecutes for and in behalf of our said State of Tennessee in this behalf, and says, by reason of anything in the said plea of the said Samuel E. Rankin, who pleaden in bar alleged, the said State of Tennessee ought not to be precluded from prosecuting the said indictment against the Samuel E. Rankin, because he says there is not any record of the supposed acquittal in manner and form as the said Samuel E. Rankin hath above in his said plea alledged, and because for the further reason that he says that if any such trial was had, as the said Samuel E. Rankin, in his said plea alleged, such trial was not had during the continuance of any war, invasion, or rebellion, and that therefore such trial was wholly unauthorized, illegal, and void; and because, for the further reason, that he says that if any such trial was had, as the said Samuel E. Rankin hath in his said plea shown alledged, such trial was had
14 and obtained by fraud and colision with the military authority, and this while an indictment was pending in the court against said defendant, and the jurisdiction of this court has attached and the civil court was in full operation and ready to try and hear the same; that only a portion of the evidence against the said defendant was allowed to be introduced; that by far the most important points of the evidence against said defendant was purposely withheld against the most earnest remonstrance of the prosecutor; and that all the proceedings of said military court was for the manifest purpose and intent of shielding said defendant from the punishment justly due to his crime.

And all this he, the said James M. Meek, prays may be inquired of by the country.

JAMES M. MEEK, *Atto. Gen'l.*

And the said Samuel E. Rankin comes into court here, and having heard the said replication read, says that the said replication and the matter therein contained are not sufficient in law, and that he is not bound to answer the same otherwise than by demurer, and for causes of demur sets down and shows—

15 1. Said replication is double.

2. Said replication traverses the entire plea; then sets out matters in evidence.

3. Said replication pleading matters in avoidance concludes to the country.

4. Other causes to be shown in argument wherefore the defendants demurs and prays judgment, and that be discharged.

SAM. E. RANKIN.
BARTON & McFARLAND, *Atto.*

Endorsed: Filed Aug. 18th, 1866. S. S. McCuistion, cl'k.

Replication.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder.

And the State, by J. M. Meek, the attorney general, comes, and for replication to the defendant's plea, says that the said defendant was not at the time, where, &c., in the military service of the United States, and he was not arraigned, charged, tried, and acquitted by the court-martial having jurisdiction of the same for the same
16 offence charged in this indictment during the existence of civil war and rebellion in manner and form as the defendant has in his plea alledged; and of this the attorney general puts himself upon the country.

JAMES M. MEEK, *Atto. Gen'l.*

And defendant also.

SAMUEL E. RANKIN.
BARTON & MCFARLAND, *Atto.*

Endorsed: Filed Aug. 20th, 1866. S. S. McCuistion, clerk.

Demurrer.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder.

And the State, by J. M. Meek, attorney general, comes and says that the matters and things in the defendant's plea seth forth are not sufficient in law to bar the State from prosecuting this indictment, and that he is not bound to answer the same otherwise than by demurrer.

The State therefore demurs and prays judgment, &c., and for cause of demurrer sets down this—

1st. Said plea does not show a state of facts giving the court-martial refered to, jurisdiction to try the defendant for the offence
17 charged in this indictment.

2nd. The former acquittal set forth in said plea is not, under the Constitution and laws, a bar to the present prosecution.

For this and other reasons the State prays judgment wether the State is bound to further answer said plea.

JAMES M. MEEK,
Attorney General.

Endorsed: Filed August 14, 1866. S. S. McCuistion, clerk.

Exhibit A.

ADJUTANT GEN'L OFFICE, STATE TENN.,
Nashville, Jan'y 30, '64.

Recorded Book A, page 23, No. 743.—[Duplicate.]

The governor of the State of Tennessee, U. S., to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Samuel E. Rankin, of the county

of Jefferson, we do appoint him first lieutenant in the ninth regiment of cavalry of Tennessee volenteers, in the service of the United States, for three years, unless sooner discharged, to rank as such from the fifteenth day of August, one thousand eight hundred and sixty-three.

18 He is, therefore, carefully and diligently to discharge the duties of first lieutenant, by doing and performing all manner of things thereunto belonging; and I do strictly charge and require all officers and soldiers under his command, to be obedient to his orders; and he is to observed and follow such orders and directions, from time to time, as he shall receive from the President of the United States of America, or the general or superior officer set over him, according to the rules and discipline of the war.

Given under my hand, in the city of Nashville, this thirteeth day of January, in the year of our Lord one thousand eight hundred and sixty-four, and in the eighty-ninth year of the independence of the United States.

[SEAL.] ANDREW JOHNSON.

By the governor:

EDWARD H. EAST, *Secretary of State.*

Endorsed: Headquarters 9th reg't Tenn. cav., February 2d, 1864. Is hereby assigned to duty, according to the rank conferred by this commission. Jo. Parsons.

19 Col. 9th Tenn. Cav., com'dg Reg't:

I, , do solemnly swear (or affirm) that I have never voluntarily born arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise, the functions of any office whatever, under any authority, or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto; and I do further swear (or affirm,) that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God. And I solemnly swear that I will bear true allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States, and the orders

20 of the officers appointed over me, according to the rules and articles for the government of the armies of the United States.

Sworn to and subscribed before me this day of 186 .

Exhibit "B."

HEADQUARTERS DEPARTMENT OF TENNESSEE,
Knoxville, Tenn., Sept. 8th, 1865.

[Special Orders No. 65.—Extract.]

* * * * *

IV. " " The following named officers, having been returned in service for trial on the charges filed against them, will report in person on or before the 14th inst., to Bv't Maj. Gen'l A. C. Gillem, com'dg dist. East Tenn., for trial before the general court-martial now in session at Chattanooga.

Lieut. LAWRENCE E. RANKIN,
9th Tenn. Cav.

By command of Major General Stoneman.

WM. L. PORTER,
Assistant Adjutant General.

Lt. RANKIN.

21 *Exhibit "C."*

HEADQ'RS DEP'T OF TENNESSEE,
Knoxville, Tenn., Sept. 11th, 1865.

[General Orders No. 10.]

I. All the colored regiments in [in] each district of this department will be at once consolidated in one brigade. Those in East Tennessee will constitute the first; those in Middle Tennessee will constitute the second; and those in West Tennessee, the third brigade.

Each brigade will be commanded by the commander of the district in which the brigade is serving, and will be considered as an independent brigade, as contemplated in General Orders No. 251, War Department, Adjutant General's Office, series 1864.

By command of Maj. Gen'l Stoneman.

(Signed) WM. L. PORTER,
Ass't Adj. Gen'l.

Office:
G. M. BASCOM,
Maj. & Adj. Bt. Col. U. S. V.

Proceedings of a general court-martial, commenced at Chattanooga, Tenn., by virtue of the following special order:

22 HEADQUARTERS DIST. OF EAST TENNESSEE,
Chattanooga, Tenn., Sept. 19th, 1865.

[Special Order No. 206.]

VI. A general court-martial is hereby appointed to meet at Chattanooga, Tenn., on the 20th Sept., 1865, or as soon thereafter as practicable, for the trial of such persons as may be brought before it.

Detail for the court.

Maj. O. M. Gross, 1st U. S. C. H. A.
Capt. Wm. H. Clark, 16th U. S. C. I.
" C. H. Thompson, 1st U. S. C. H. A.
1st Lt. E. B. Hall, 1st " " "
1st Lt. M. S. Harrod, 1st " " "
1st Lt. Wm. Collins, 16th U. S. C. I.
2d Lt. E. S. Acker, 16th " "
Maj. T. B. Kirby, 44th U. S. C. I., Judge Advocate.

No other officers than those named can be assembled without manifest injury to the service.

The court will set without regard to hour.

By command of Bv't Maj. Gen'l Gillem.

EDWARD S. RICHARDS,
Capt. & Assist. Adj't Gen'l.

2d.

9 A. M., SEPT. 21st, 1865.

Court met pursuant to the above order.

23 Present: Major O. M. Gross, 1st U. S. C. H. H., Capt. Wm. H. Clark, 16th U. S. C. I., Capt. C. H. Thompson, 1st U. S. C. H. A., 1st Lt. E. R. Hall, 1st U. S. C. H. A., 1st Lt. M. S. Harrod, 1st U. S. H. A., 1st Lt. Wm. Collins, 16th U. S. C. I., 2nd E. S. Acker, 16th U. S. C. I., Major T. B. Kirby, 44th U. S. I. Judge Advocate.

The court then proceeded to the trial of the accused, Samuel E. Rankin, Co. "B," 9th Tenn. cav., who being brought before the court, and having heard the orders convening the courts was asked if he objected to being tried by any member of the court named in the order now present, to which he replied in the negative.

The members of the court were then severally duly sworn by the judge advocate, and the judge advecate and recorder were duly sworn by the president of the court, all of which orths were administered in the presence of the accused; the accused then made application to introduce J. C. Flemming as counsel, which was granted by the court.

The accused, Samuel E. Rankin, was then arrayned upon the following charge and specifications:

Charge—Murder.

24 Specification.—In this that the said Samuel E. Rankin, 1st lieut. Co. "B," 9th Tenn. cav., did willfully, maliciously, feloniously and of his malice aforethought kill and murder, or cause to be killed and murdered, in the first degree, by shooting or causing to be shot, one John A. Thornhill, a citizen of Jefferson county, State of Tennessee, with a pistol.

This at Jefferson county, State of Tennessee, on the 24th day of June, 1865.

To which charge, and specification, the accused plead as follows:

Plea.

To the specification.—Not guilty.
To the charge.—Not guilty.

James W. Bell, Capt. 9th Tenn. cav., 1st witness for the prosecution being duly sworn, testifies as follows:

Q. J. A.: State your name, rank and command?

A. A. A.: W. Bell, Capt. Co. "D," 9th Tenn. cav.

Q. J. A.: Do you know the accused?

A. I do.

Q. J. A.: Were you present on the 24th of June, 1865, at the time John A. Thornhill, a citizen of Jefferson county Tenn. was fired upon by members of the 9th Tenn. cav'y?

25 A. I was not present when the firing began; I was two or three hundred yards off when the firing occurred.

Q. J. A.: Where was the accused at the time, and what was his connection with the party who did the firing?

A. The accused was in the rear of me, from one to two hundred yards; he belonged to the party, being under my command, but was not with the firing party.

Q. J. A.: Did he give or receive any orders at that time with reference to the firing?

A. He did not.

Q. J. A.: How long have you been associated with the accused as an officer, and what has been his character as an officer and a man?

A. Going on three (3) years; his character has been good.

The judge advocate then announced the case closed on the part of the prosecution. The defence submitted the case without rema k.

The court was then cleared, and after mature deliberation upon the evidence adduced, do find the accused, Samuel E. Rankin, 1st Lt. Co. "B," 9th Tenn. cav'y, as follows:

Finding.

Of the specification, Not guilty.
Of the charge, Not guilty.

26 *Acquittal.*

And the court do, therefore, honorably acquit him, Samuel E. Rankin, 1st Lt. Co. "B," 9th Tenn. cav'y.

O. M. GROSS,
Maj. 1st U. S. C. H. A., President.
THO'S B. KIRBY,
Maj. 44th U. S. C. I., Judge Advocate.

The court then adjourned to 8 a. m., Sept. 22d, 1865.

HEADQUARTERS DIST. E. TENN.,
Chattanooga, Sept. 28th, 1865.

Proceedings and findings and sentence approved. Lieut. Rankin is hereby released from arrest and restored to duty.

ALVIN G. GILLEM,
Bv't Maj. Gen'l U. S. Vols.

HEADQUARTERS DISTRICT OF EAST TENNESSEE,
Chattanooga, Tenn., Oct. 5th, 1865.

[General Orders No. 70.]

Before a court-martial which convened at Chattanooga, Tenn., pursuant to Par. VI, Special Orders No. 206, dated Headquarters District of East Tennessee, Chattanooga Tenn., September 19th, 1865, and of which Maj. O. M. Gross, 1st U. S. C. A., Heavy, is president, was arraigned and tried.

27 I. Samuel E. Rankin, 1st lieutenant Co. "B," 9th Tenn. cav'y.

Charge.—Murder.

Specification.—In this: that the said Samuel E. Rankin, 1st lieutenant Co. "B" 9th Tenn. cav'y, did willfully, maliciously, and feloniously, and of his malice aforethought, kill and murder, or cause to be killed and murdered, in the first degree, by shooting, or caused to be shot, one John A. Thornhill, a citizen of Jefferson county, State of Tennessee, on the 24th day of June, 1865. To which charge and specification the accused pleaded not guilty.

Finding.

The court having maturely considered the evidence adduced, do find accused, Samuel E. Rankin, 1st lieutenant Co. "B" 9th Tennessee cavalry, not guilty.

Acquittal.

And the court does, therefore, "honorable acquit him, the said Samuel E. Rankin 1st lieutenant Co. "B" 9th Tennessee cavalry.

II. Charles Gilbert private Co. "A," & U. S. C. A., Heavy. Charge, violation of the 7th article of war; to which charge the accused pleaded not guilty.

Finding. Guilty.

Sentence.

28 And the court does, therefore, sentence him, Charles Gilbert, private Co A, 1st U. S. C. A., Heavy, "to be dishonorable discharged the service of the United States, with loss of all pay and allowances now due or to become due him, except the amount due the United States for stoppage, and the regimental sutler, and to be confined in such State penitentiary as the commanding general may direct for three (3) years.

I I. Peyton Hill, corporal Co. "C" 1st U. S. C. A., Heavy. Charge, violation of the 8th article of war: Specification in this: that he, Peyton Hill, corporal Co. "C," 1st U. S. C. A., Heavy, when his company was ordered out to suppress a mutiney, then about to break out amongst a portion of the men of his regiment, did leave his company until forced into the ranks by Captain E. L. Foster, his company commander. Specification II, in this: that Peyton Hill, corporal Co. "C," 1st U. S. C. A., Heavy, while there was immenent danger of a mutiny breaking out amongst a portion of the men of his regiment and company, did say in the presence of enlisted men of his company, "I will not fire on our own men," or words to that effect. This
29 at the camp of his regiment near Greenville, Tenn., on or about the 20th day of August, 1865.

To which charge and specification the accused pleaded not guilty.
Finding. Guilty.

Sentence.

And the court does, therefore, sentence him, [him] Peyton Hill, corporal Co. "C," 1st U. S. C. A., Heavy, to be dishonorable discharged the service of the United States, with loss of all pay, allowances now due or to become due, except the amount due the United States for stoppage, and to the regimental sutler, and to be confined at hard labor in such State penitentiary as the commanding general may direct, for five years.

IV. John Sanders, private Co. "D," 1st U. S. C. A., Heavy.

Charge.—Violation of the 7th article of war.

Specification—In this, that he, John Saunders, private Co. "D," 1st U. S. C. A., Heavy, did excite and join in a mutiny then existing in his company and regiment, by parading the streets of his company, with his gun in his hand, after taps. This at the camp of his company and regiment, on or about the 20th day of August,
30 1865.

To which charge and specification the accused pleaded not guilty.

Finding. Guilty.

Sentence.

And the court does, therefore, sentence him, John Saunders, private Co. "D," 1st U. S. C. A., Heavy, to be dishonorable discharged the service of the United States, and forfeit all pay and allowances now due or to become due, except the amount due the United States for stoppages, and the regimental sutler, and to be confined at hard labor in such State penitentiary as the commanding general may direct, for two (2) years.

V. Silas Eckles, private Co. "D," 1st U. S. C. A., Heavy.

Charge.—Violation of the 7th article of war.

Specification.—In this: that he, Silas Eckles, private Co. "D," 1st U. S. C. A., Heavy, did excite and join mutiny then existing in his company and regiment, by parading the streets of his company quar-

ters with his gun in his hand. This at the camp of his regi-
31 ment near Greenville, Tenn., on or about the 20th day of August, 1865.

To which charge and specification the accused pleaded "guilty." Finding. Guilty.

Sentence.

And the court does, therefore, sentence him, Silas Eckles, private Co. "D," 1st U. S. C. A., Heavy, to be dishonorable discharged the service of the United States, with loss of all pay and allowances now due or to become due him, except the amount due the United States for stoppages, and to the regimental sutler, and to be confined at hard labor in such State penitentiary as the commanding general may direct for two (2) years.

VI. Frank Gammon, corporal Co. "C," U. S. C. A., Heavy.

Charge.—Violation of the 7th article of war.

Specification I—In this: that he, Frank Gammon, corporal Co. "C," 1st U. S. C. A., Heavy, did excite and encourage a mutiny, by saying, I will not fire on our own men, and should an attempt be made to release these prisoners I will run if one shot is fired, or words to that effect; his company being then on duty to prevent a forcible release of a prisoner by mutinous and rebellious men of the
32 regiment. This at or near Greenville, Tenn., on or about the 20th day of August, 1865.

Specification II.—In this: that he, the said Frank Gammon, as aforesaid, did declare that his wife should not be sent away from camps, he well knowing that the commanding officer had issued an order that all women should remove from the vicinity of the camps immediately, and also well knowing that a portion of his men in upon mutiny against the enforcement of said order. This at or near Greenville, Tenn., on the 20th day of August, 1865.

To which charges and specifications the accused pleaded not guilty. Finding. Guilty.

Sentence.

And the court does, therefore, sentence him, Frank Gammon, corporal Co. "C," 1st U. S. C. A., Heavy, "to be dishonorable discharged the service of the United States, with loss of all pay and allowance now due and to become due him, except the amount due the United States for stoppages, and the regimental sutler, and to be confined in such State penitentiary as the commanding general may direct for two (2) years.

VI. The proceedings, findings, and acquittal in the
33 case of Samuel E. Rankin, 1st lieutenant Co. "B," 9th Tenn. cav'y, are approved. Lieut. Rankin is hereby relieved from arrest and restored to duty.

The proceedings, findings, and sentences in the cases of private Charles Gilbert, Co. "A," Corporal Peyton Hill, and Frank Gammon, Co. "C," and private John Saunders, and Silas Eckles, Co. "D," 1st

U. S. C. A., Heavy, are approved. The State Penitentiary at Nashville, Tenn., is designated as the place of confinement, and the [the] prisoners will be sent there without delay.

By command of Brevet Maj. General Gillem.

(Signed) G. M. BASCOM,
Maj & A. A. G.

Official:

J. M. SOUTHARD,
Lt. & Adj. and A. A. A. G.

Official copy for Lieut. Samuel E. Rankin, 9th Tenn. Cav.

J. HOLT,
Judge Advocate General.

Endorsed: Proceedings of a G. C. M., convened by Special
34 Orders No. 206, h'dq'rs dis. of East Tenn., Chatta., Tenn., Sept. 19th, '65 O. M. Gross, Maj. 1st, U. C. A., Heavy, president. Thos. B. Kirby, Maj. 44 U. S. C. I., Judge Advocate the United States. Samuel E. Rankin, 1st Lt. Co. "B," 9th Tenn. cav'y. Record D of T., 36, Jan. 14, '66.

Bill of exceptions.

THE STATE OF TENNESSEE
vs.
SAMUEL E. RANKIN. } Murder.

Be it remembered, that upon the trial of the issue joined in this case the defendant introduced and had a commission to the defendant from Andrew Johnson, governor of the State of Tennessee, hereto annext, marked Exhibit "A," as part of the bill of exceptions. The defendant next introduced and read Special Order No. 65, hereto annexed, marked Exhibit "B," after having first proved that the signature of W. L. Porter thereto as Assistant Adjutant Genera, was genuine. This reading of this paper was objected to by the attorney general, but the objection overruled, and the paper read to the jury.

The defendant next introduced Samuel Walker, a witness, who proved that the defendant acted as 1st lieut. in Co. "B," 9th Tennessee cavalry, in the volunteer service of the United States
35 during the late war; that witness was a member of the regiment, and was, with the main body of the regiment, mustered out on the 25th day of September, 1865; that the defendant was not mustered out at that time, but witness understood he was retained in the service for some special reason.

The defendant introduced and offered to read a copy of the record of the proceedings at a court-martial hereto annexed, as part of this bill of exceptions marked Exhibit "C." The attorney general objected to the reading of this paper upon the ground that there was no evidence that this was a true or genuine copy from the original record, and this objection was for the time sustained by the court. The defendant then introduced John M. Fleming, a witness, who

proved that he was counsel of the defendant before the court-martial at Chattanoga as well as in this court; that a five days previous he had an interview with Gen'l L. S. Trowbridge who was appearing with the attorney general upon behalf of the State in defence this record, and another of a similar character in the case of P. C. Rutherford; that Gen'l Trowbridge informed witness that there would be no further trouble given him in regard to the authentication of said record, that he has no doubt that the signature of
36 J. Holt, judge advocate general, thereto was genuine. I the same connection, witness further referred to the facts that Major T. B. Kirby, the judge advocate of the court-martial, who was then at Chattanoga, was under subpoena to prove the genuiness of the record of the court-martial, and enquired of General Towbridge whether it would be necessary to telegraph him to come or to send to Washington for further testimony as to the authentical of the record. In reply to which witness was informed it would not.

General Trowbridge was not present at the trial, having left the court the day previous. The defendant's counsel there again offered to read said record. The attorney general again renewed his objection to the reading of said record for the reason first stated, and upon the ground that the agreement proved with General Trowbridge was not sufficient to authorize the introduction of the record, and upon the ground that attorney general alone had the right to control the case for the State, but the attorney general admitted that General Trowbridge was of counsel for the State, but the court overruled the objection and permitted the record to be read, to which the attorney general excepted.

37 The attorney general also, in the argument of the cause, excepted to said record on account of a variance between the record set forth in the plea and the one read to the jury, and upon this ground moved the court to withdraw the record from the jury, which the court refuse to do to, which also the attorney excepted.

The defendant then proved by Jno. M. Fleming that he was counsel for the defendant upon the trial before the court-martial; that the defendant is the same man tried and acquitted as shown by the record, and the offence charged in the indictment is the same upon which he was tried and acquitted by the court-martial; that he remembers that the president of the court was Major O. M. Gross, U. S. V., and that the judge advocate was Maj. T. B. Kirby.

This was all the testimony introduced by the defendant.

The attorney general then introduced Joel Johnson, a witness, by whom he proposed to prove that he was present at the trial by the court-martial; that the prosecutor was present witnesses to prove that the defendant were guilty of the murder charge, and urged the judge advocate examine them when the were refused, and that
38 in trial and acquital, by the fraudulent procurement of the defendant himself, but upon exceptions taken by the defendant counsel the court refused to hear the testimony.

The was no other evidence produced.

To all which the attorney general excepts in law and tenders this

his bill of exceptions, which, by order of the court, is signed, sealed, and made a part of the record in the case.

December the 14th, 1866.

[SEAL.] JAMES P. SWANN, *Judge*.

STATE OF TENNESSEE
vs.
SAMUEL E. RANKIN.

Be it remembered, that after the rendition of the verdict in this case on Friday, the 14th day of December, 1866, the attorney general, on behalf of the State, stated to the court that he would take one appeal to the Supreme Court, and thereupon the defendant counsel moved the court to discharge the defendant. Then court then asked if nothing further was to be said, and no other motion being made, the court gave judgment upon the verdict of the
39 jury, on the plea of a former acquittal, that the defendant go hence without day. But because the attorney general prayed an appeal, the court granted an appeal, and directed that the defendant enter into recognizance to make his personal appearance to the Supreme Court, and refused to discharge the defendant.

The defendant then entered into recognizance and left the court.

On Saturday, the 15th of December, 1866, the attorney general moved the court to set aside the recognizance and judgment and allow a rule for a new trial to be entered, but the defendant, not being present, on motion of the attorney, a capias was awarded and the defendant brought into court, whereupon the motion to set aside the judgment and recognizance was renewed, and the court ordered the judgment and recognizance to be set aside. The attorney general then entered a rule to show cause, why a new trial should be granted, on consideration of which the rule was discharged and a new trial refused. The defendant, by his counsel, then moved the court that he be discharged, whereupon the court rendered judgment discharging the defendant, from which judgment the attorney general, on behalf of the State, prayed an appeal to the Supreme Court,
40 which was granted, and the defendant ordered to enter into recognizance for his appearance at the next term of the Supreme Court, to be held at Knoxville, on the second Monday of September next, which was done.

To all which opinion of the court in allowing a capias to be awarded, after the defendant had given his recognizance to appear in the Supreme Court, in allowing the motion to set aside the judgment and recognizance, and in entertaining said motion for a new trial to be entered, and in granting and appeal to the Supreme Court, and ordering the defendant to enter into recognizance and refusing to discharge him from custody, the defendant excepts in law and tenders his bill of exceptions, which he prays may be signed, sealed, and made a part of the record in this cause, which is done December 15th, 1866.

[SEAL.] JAMES P. SWANN, *Judge*.

THE STATE OF TENNESSEE:

Be it remembered, that at a regular term of the Circuit Court, opened and held for the county of Jefferson, in the State of Tennessee, at the court-house in Dandridge, on the second Monday
41 of August, 1866, being the 13th day of said month. Present and presiding, the Hon. James P. Swann, one of the judges of the Circuit Courts of Tennessee, and assigned by law to hold the Circuit Courts of the second Judicial circuit in said State.

The following proceedings were had, to wit:

Asa Derrick, esq., high sheriff of Jefferson county, returned hereinto open court the States writ of venire facias to him directed; whereby it appears that the following named persons have been duly designated and appointed jurors to the present term of this court by the county court of said county, to wit: William Rollins, John Mort, James Chany, James H. Carson, Jesse B. Thornton, Vineyard Brimer, Benjamin Carson, John Lockhart, Jesse Crouch, James M. Copeland, John Vance, jr., John Galyon, G. W. Buckaliew, Willson Manley, Robert Caldwell, R. J. Galyon, Joseph Turner, William Kelly, Willie Lime, C. L. Gregory, Richard Thornhill, Pryor Witt, William S. Biddle, David Cox, William Felkner, W. J. Donaldson, J. S. Dyer, Morgan Lime, and J. A. Caldwell, all good and lawful men of the county of Jefferson, out of whom the court proceeded, as the statute in such case made and provided direct, to elect a grand jure whom were elected and empannelled
42 to wit: 1, John S. Dyer; 2, James Chaney; 3, Jesse Crouch; 4, William Rollins; 5, B. F. Galyon; 6, Willie Lime; 7, William Kelley; 8, John Mort; 9, Morgan Lane; 10, Richard Thornhill; 11, C. S. Gregory; 12, Isaac A. Caldwell; 13th, Jesse B. Thornton; of whom the court appointed John Dyer foreman, who, together with the jurors elected, were sworn and received their charge from the hon. court and retired to consider of their presentments.

The following proceedings were had, to wit:

THE STATE
vs. } Murder.
SAMUEL RANKIN.

SATURDAY, *August* 18*th*, 1866.

This day came the State, by J. M. Meek, her attorney general, and the defendant in his own proper person; and thereupon came on for argument, the demurrer of the defendant to the replication of the attorney general, on behalf of the State, to the defendant's plea, and argument being heard, and the premises understood, it is con-
43 sidered by the court that the demurrers be sustained, and leave is granted the attorney general to file an issuable replication.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder.

MONDAY, *August 20th*, 1866.

Came the State, by J. M. Meek, her attorney general, as well the defendant, in his own proper person, and by attorney; and thereupon came a jury of good and lawful men of Jefferson county, to wit: Wade H. Newman, Alfred Aley, W. D. Hudgen, W. J. Chambers, W. T. Buckhannan, Jacob Denton, John Seabolt, Jesse Riggs, and B. S. Brown, who, being elected, tried, and sworn, well and truly to try the issue joined between the State of Tennessee and the defendant, and a true verdict to render according to the evidence, upon their oaths do say that they find the issue joined for the State; that the said defendant, Samuel E. Rankin, was not arraigned, tried, and acquitted as in his plea he doth alledge; and thereupon the defendant, by his attorney, entered a rule to show cause why a new trial should be granted, upon consideration of which it is considered by the court
44 that said verdict be set aside and [and] a new trial granted. And this cause being by the court, on sufficient cause shown, ordered to be continued until the next term of this court; and thereupon came the defendant, Samuel E. Rankin, and with him Christopher Rankin and Benjamin F. Franklin, his sureties, and acknowledged themselves indebted to the State of Tennessee, as follows: the said Samuel E. Rankin, the defendant, in the sum of four thousand dollars, and the said Christopher Rankin and Benjamin F. Franklin, his sureties, jointly and severally, in the like sum of four thousand dollars, of their respective goods and chattels, lands and tenements, to be levied, but to be void if the defendant, the said Samuel E. Rankin, shall make his personally appearance before the judge of the next Circuit Court, at a court to be held for the county of Jefferson, at the court-house, in Dandridge, on the second Monday of December next, then and there to answer a charge of the State against him by the indictment for murder, and does not depart this court without leave.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder.

THURSDAY, *December 13th*, 1866.

45 This day came the State, by [by] J. M. Meek, her attorney general, as well the defendant, in his own proper person, and by attorney; and thereupon came a jury of good and lawful men of the county of Jefferson, to wit: William Lancaster, Henry C. Champers, James H. Dinweddie, J. W. Denton, Wade H. Newman, A. Chrisman, Jesse Riggs, Callaway Cate, Edmond Morgan, James Moore, Jessee H. Garner, S. S. Goforth, who being duly elected, tried, and sworn, well and truly to try the issue joined, and a true verdict to give according to the evidence, upon their oath were respited from rendering their verdict in this cause until to-morrow, and were put in charge of a sworn officer.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder.

FRIDAY, *Dec'r* 14*th*, 1866.

This day came the State, by J. M. Meek, her attorney general, as well as the defendant, in his own proper person, and by attorney, and thereupon came the same jury as on yesterday, who were respited from rendering their verdict in this cause until the day, to
46 wit: William Lancater, Henry C. Chambers, James H. Dinwiddie, Jacob W. Denton, Wade H. Newman, Andrew Chrisinan, Jesse Riggs, Callaway Cate, Edmund Morgan, James Moore, Jessee K. Garner, and Sebron S. Gofoth, who, upon their oath aforesaid, do say that they find the issue joined between the State of Tennessee and the defendant, in favor of the defendant. It is therefore considered by the court that the defendant be discharged and go hence without day, and that the State of Tennessee pay her own costs on a proper bill being certified And the attorney general prays an appeal in the nature of a writ of error, to the next term of the Supreme Court, to be held at Knoxville, on the second Monday of September next; and the attorney for the defendant moved the court to discharge the defendant, which the court refused to do. And the attorney for the State tendered his bill of exception to the action of the court in this case, which is signed and sealed by the court, and ordered to be made a part of the record in this cause; and came the defendant, and along with him into open court Jeriah E. Rankin and Benjamin F. Franklin, his securities, who acknowl-
47 edged themselves indebted to the State of Tennessee, as follows, to wit: the said defendant in the sum of four thousand dollars, and the said Jeriah E. Rankin and Benjamin F. Franklin in the like sum of four thousand dollars, jointly and severally, to be levied of their respective goods and chattels, lands, and tenements, yet to be void if the said defendant shall well and truly make his personal appearance before the judge of our Supreme Court of the State of Tennessee, to be held at the court-house in Knoxville, on the second Monday of September next, and shall then and there answer the charge of the State exhibited against him in this case by indictment for murder, and shall abide by and perform whatever judgment shall be rendered by said Supreme Court in this cause, and shall not depart the court without leave. And said appeal is granted and the record ordered to be certified.

THE STATE
vs.
SAMUEL E. RANKIN. } Murder,

SATURDAY, *December* 15*th*, 1866.

48 Came the State, by her attorney general, and the defendant in his own proper person, as well as by attorney, and the attorney general moved the court for a new trial in this case. And on motion the appeal granted in this case on yesterday is set aside, together with the recognizance entered into, and came on the rule for a new trial, which, after argument, is discharged. It is therefore

considered that the defendant go hence without day, and that the State pay her own costs, on a proper bill being certified. And the attorney general for the State prayed an appeal in the nature of a writ of error to the next term of the Supreme Court, to be held at Knoxville, on the second Monday of September next, and having tendered his bill of exceptions, which was signed and sealed by the court, and ordered to be made a part of the record in this cause. And the defendant again moved the court to be discharge from answering said appeal, but the court refused to discharge said defendant from answering said appeal, but ordered him to remain in custody, or to enter in recognizance as to give bond for his appearance before said Supreme Court. And thereupon came the defendant, and along with him Jeriah E. Rankin and Benjamin F. Franklin, his securities, who acknowledged to the State of Tennessee, as follows, to wit, the said defendant in the sum of four thousand dollars; and his said
49 securities jointly and severally in the like sum of four thousand dollars, to be levied of their respective goods, chattels, lands, and tenements, yet to be void if the defendant shall make his personally appearance before the judges of the next term of our Supreme Court for the State of Tennessee, at a court to be held at the court-house, in the town of Knoxville, on the second of September next, and shall then and there answer the charge of the State exhibited against him by indictment for murder, and shall stand to, abide by, indure and perform whatever judgment said Supreme Court shall render in the cause, and shall not depart the court without leave. The appeal prayed for by the attorney general for the State from the judgment in this cause is granted, and the record is ordered to be certified. And the defendants counsel tendered his bill of exceptions to the action of the court in allowing a rule for a new trial to be entered after the prayer for an appeal, which bill of exceptions is signed, sealed, and ordered to be made a part of the record in this cause.

Bill of costs.

THE STATE
vs.
SAMUEL RANKIN. } Murder.

State tax	$2 50
50 Atto. General James M. Meek	20 00
Clerk for indictment plea, &c., 25c.; ent. indictment, $1 00; 4 capeases, $3 00; two orders for alias cap., 50c.; sub'as 26 names $2 60.; filing demurrer, 25c.; demurrer sustained, 25.; jury, 50c.; rule, 25.; rule made absolute, 25.; recognizance, 25.; two securities, 50.; one continuance, 25.; jury, 50.; filing order, 25.; judg't, 75.; rule, 25.; rule discharged 25.; recognizance, 25.; 2 securities, 50.; appeal, and filing bill of exceptions, 75; taxing costs, 50.; 60 probates, $3 00; transcript 16,000 words, $16 00; copy of costs, 25.; certificate and seal of office, 50c	32 85

Sh'ff N. B. Swann, returning 2 cap. not found 50
Sh'ff A. Derrick, ex. 2 copies, $2 00; taking 2 bonds, 50.; sum. 17 witnesses, $4 25c 6 75
Sh'ff Gibson, sum. 1 witness 25
D. sh'ff James Cox, sum. 1 witness 25

Witnesses for the State.

A. M. Hooper, 1 day 30 miles 2 20
L. W. Hooper, 4 days 100 miles, 2 fir 8 20
Joel Johnson, 6 days 6 00
C. A. Biddle, 6 days 44 miles 7 76
R. Laramore, 12 days 60 miles 14 40
J. A. Rians, 11 days 52 miles 13 08
Sarah J. Rians, 6 days 26 miles 7 04

51

Emily Bowers, 6 days, 26 miles $7 04
Joseph Jones, 10 " 180 " 17 20
J. A. Rankin, 5 " 5 00
John McNees, 4 " 4 00
M. M. Lester, 2 " 2 00
John C. Givens, 4 " 22 miles 4 88
J. B. Sharp 8 " 8 00

Def't witness.

Thomas B. Kirby, 6 days, 292 miles $17 68
Samuel Walker, 2 " 2 00
Tavern keeper, P. Mitchell, boarding jury 2 days and nights *a* $9 00 ..... 18 00

STATE OF TENNESSEE,
Jefferson County:

I, S. S. McCuistion, clerk of the Circuit Court of said county, do hereby certify that the foregoing is a true and perfect transcript taken from the records of my office.

Given under my hand and seal of office in Dandridge, this 28th day of March, 1867.

S. S. McCUISTION, *Clerk.*

Endorsed: No. 12. State cause. Transcript, 2d circuit, Jefferson county. The State *vs.* Samuel E. Rankin. Appeal from Circuit
52 Court, Jefferson county. Rec'd and filed August 26th, 1867. Security in recognizance, Jeriah E. Rankin and Benjamin F. Franklin. M. L. Patterson, clerk.

Judgment reversed and cause rendered.

STATE OF TENNESSEE:

Be it remembered, that at a regular term of the Supreme Court for the State of Tennessee, open and held for the eastern division of the

State at the court-house in Knoxville, on the second Monday being the 9th day of September, 1867, one thousand eight hundred and sixty-seven.

There was present and presiding on the bench, the honorable Sam Millegan, one of the judges of said court, the other two not appearing. The court was opened and adjourned until to-morrow morning 10 o'clock.

SAM MILLIGAN.

53 WEDNESDAY, *October* 16*th*, 1867.

Court met pursuant to adjournment, present and presiding Hon. Sam Milligan, Hon. Alvin Hawkins, and the Hon. J. O. Shackelford, judges of the Supreme Court, &c.

Among other things the following proceedings were had, to wit:

THE STATE IN ERROR
vs.
SAMUEL E. RANKINS. } Indictment for murder.

This case, having been regularly reached upon the docket, and called for trial according to the practice of this court, come the attorney general to prosecute on behalf of the State and the plaintiff in error appears at the bar of the court in his own proper person, and by attorney and the case having been taken up for trial, thereby the former security is released, and the prisoner being charged in custody of the sheriff, and on motion it is ordered by the court that the plaintiffs in error enter into recognizance in the sum of $4,000 00 with security in the sum of $4,000 00 for his personal appearance
54 at this court from day to day. Thereupon came the plaintiff in error, Samuel E. Rankin, and brought along with him R. M. Barton, esq., who acknowledged himself as the security of the plaintiff in error, the said Samuel E. Rankin, in the sum of four thousand dollars, and the said R. M. Barton, esq., in the sum of four thousand dollars, to be levied of their respective good and chattels, lands and tenements, to the use of the State. But to be void on condition that the said Samuel E. Rankin, the plaintiff in error, shall make his personal appearance before the honorable judgo of this court, from day to day and answer to the charge of the State prefered against him by indictment for murder, and not depart said court without leave of same.

THURSDAY, *October* 17*th*, 1867.

Court met, pursuant to adjournment, present and presiding the hon. Sam Milligan, hon. Alvin Hawkins; the hon. J. O. Shackelford being indisposed.

Same Term of Court.

THE STATE IN ERROR
vs.
SAMUEL E. RANKIN. } Indictment for murder.

55 In this case came the attorney general to prosecute, and the plaintiff in error appears at the bar of the court in his own

proper person and by attorney, and on motion R. M. Barton, esq., his security for his appearance from day to day is related and thereupon came the plaintiff in error into court and brought along with him J. T. Abernathy, J. W. Bell, G. R. Brandow, A. R. Fermarult and J. M. Flemney, who acknowledged themselves as the security of the pl'ff in error.

The said Samuel E. Rankin, the pl'ff in error, in the sum of four thousand dollars, and the said securities in the sum of four thousand, jointly and severally to be levied of their respective goods and chattels, lands and tenements, for the use of the State, but to be void on the condition that the said plaintiff in error, Samuel E. Rankin, shall make his personal appearance before this hon. court, from day to day, and answer to the charge of the State against him, for murder, and not depart said court without leave of same.

THURSDAY, *October* 31*st*, 1867.

Court met, pursuant to adjournment, present and presiding
56 the Hon. J. O. Shackleford, Hon. Alvin Hawkins and the Hon. Sam Milligan, judges of the Supreme Court &c., and the Hon. Horace Maynard, special judge &c.

Same Term.

THE STATE OF TENNESSEE
vs.
SAMUEL E. RANKIN. } Indictment for murder.

In this case come the attorney general to prosecute on behalf of the State, and the defendant appears in open court in his own proper person and by counsel, and this cause having been regularly reached on the docket and called for trial according to the practice of this court, and the record having been read and argument of counsel heard as well for the State, as for the defendant in error, and it appearing to the court from an examination of the record, that there is manifest error in the record; it is, therefore, considered by the court, that the judgment of the Circuit Court of Jefferson county be, and the same is hereby reversed, and the cause remanded to said Circuit Court for trial.

It is further ordered and adjudged by the court, that the
57 State of Tennessee recover of the defendant in error all the costs of this cause in this court, for which execution may issue.

SATURDAY, *November* 2*d*, 1867.

Court met, pursuant to adjournment; present and presiding the hon. J. O. Shackleford, hon. Alvin Hawkins, and the hon. Sam Milligan, judges of the Supreme Court &c.

Same Term.

THE STATE
vs.
SAMUEL E. RANKIN. } Indictment for murder.

In this case, come the attorney general to prosecute and the defendant appears at the bar of the court in his own proper person, and by

attorney and the judgment of this court having been entered of record on a former day of this term reversing the judgment and holding of of the Circuit Court of Jefferson county, and remanding said cause to said Circuit Court, to be proceeded in upon the merits of said indictment for the murder therein charged, and also that he pay the costs of the appeal in the nature of a writ of error to this court, and said cause aforesaid involving the construction of various acts of
58 Congress of the United States, and said judgment and the act of the State of Tennessee, having deemed adverse to said acts of Congress, a writ of error is prayed by said Samuel E. Rankin from this court being the court of last resort in the State of Tennessee to the honorable, the Supreme Court of the United States of America, to be holden at the Capitol of the United States at Washington, on 1st Monday in December next, and the attorney for the State of Tennessee, being here present in court and acknowledging notice of said proceedings, the said writ of error is allowed to the defendant, and it is ordered that the clerk of this court forthwith transmit to said Supreme Court of the United States, a true and perfect transcript of the record of said cause. The State of Tennessee against Samuel E. Rankin, duly certified and authenticated by the seal of our said court, and also the writ of error allowed to the defendant by this court thereto attached, and the defendant, Samuel E. Rankin, is hereby authorized to give bail for his personal appearance at the next September term of this court, to be held for the eastern division
59 of the State of Tennessee, at the court-house in Knoxville, on the second Monday in September next.

Whereas Samuel E. Rankin acknowledged himself in the sum of four thousand dollars, and John Williams, James W. Bell, J. F. Abernathy, B. P. Stacy, and A. R. Fermault acknowledge themselves in the sum of four thousand dollars as sureties, jointly to be levied of their respective goods and chattels, lands and tenements. But to be void on condition the said Samuel E. Rankin doth make his personal appearance before the honorable the judges of the Supreme Court of the State of Tennessee at a court to be holden at the court-house in Knoxville on the 2nd Monday, in September next then and there to answer a charge of the State of Tennessee exhibited against him by indictment for the murder of the late John Thornhill, and also to abide by and perform whatever judgment of the Supreme Court of of the United States at Washington shall pronounce in the premises.

STATE OF TENNESSEE:

60 To the honorable the judges of the Supreme Court of Tennessee now sitting in regular term at Knoxville, Tennessee:

Your petitioner, Samuel E. Rankin, who is a citizen of the State of Tennessee, humbly and respectfully shows unto your honorable court that in the case entitled the State of Tennessee *vs.* Samuel E. Rankin indictment for murder, which has heretofore, during the present term of the court, been heard and determined, he, the petitioner, was the defendant in error; your honors' court being the court of last resort in the State of Tennessee, and the judgment rendered in

the cause aforesaid being final as to the issue involved [and] and the said judgment having called in question the validity of an act of the Congress of the United States to the pejudice of petitioner's right, as he conceives, though resdectfully, represents, and also decides a question, affecting the relative jurisdiction of the court of the United States, and of the court of Tennessee, as now appears of record in this honorable court.

Your petitioner prays the issuance of a writ of error returnable to the Supreme Court of the United States to be holden in the city of Washington and District of Columbia, on the first Monday of December next, whereby the proceedings and judgment in this court
61 hereinbefore complained of may be reviewed by said court, and petitioner will ever pray, &c.

Subscribed Nov. 2d, 1867.

SAM. E. RANKIN
By JNO. M. FLEMING,
Attorney Samuel E. Rankin.

SAMUEL E. RANKIN.

Endorsed: Supreme Court Term. The State *vs.* S. E. Rankin. Petition for writ of error. Filed Nov. 2nd, 1867. M. L. Patterson, cl'k.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable judges of the Supreme Court of the State of Tennessee, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the State, in which a decision could be had in the said suit between the State of Tennessee, plaintiff in error, and Samuel E. Rankin, defendant in error, wherein was drawn in question the validity of a
62 treaty or statute of or an authority exercised under the United States, and the decision was against this validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute, or of commission held under the United States, and the decision was against the title, right, privilege specially set up or claimed under such clause of the said constitution, treaty, statute, or commission a manifest error hath happened to the great damage of the said Samuel E. Rankin, as by complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that, then under your distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of De-
63 cember next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court the 1st Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] M. L. HALL,
Clerk of the Circuit Court of the United States,
for the District of Tennessee.

Allowed by—

J. O. SHACKELFORD,
Presiding Judge of the Supreme Court of Tennessee.

Endorsed: Writ of error. The State of Tennessee *vs.* Samuel E. Rankin. Issued November 2nd, 1867. M. L. Hall, clerk of the U. S. Circuit Court, for the eastern district of Tennessee.

64 *Opinion of Supreme Court.*

THE STATE
vs.
SAMUEL E. RANKIN.

The defendant was indicted in the Circuit Court of Jefferson county at its August term, 1865, for the murder of one John Thornhill.

The indictment alledges the offence was committed in the county of Jefferson, on the 1st day of June, 1865.

To this indictment the defendant filed a special plea in bar in which he alleges that on the 1st day of June, 1865, in the military district of East Tennessee, he was a lieutenant in Company B, 9th Tennessee Cavalry, and as such in the military service of the United States, and subject to the jurisdiction of the military courts and general courts martial established by the laws of the United States for the punishment of offenders against law, who were in the military service of the United States, and that there was then and there existing an insurrection and civil war in said district, and that, on the 5th of October, 1865, in obedient to a general order dated at Chattanooga on the 19th of September, 1865, a general court martial was convened and sitting at Chattanooga for the military dis-
65 trict of East Tennessee, and the defendant was then and there arraigned, and put upon his trial upon charges and specifications charging said defendant with the same identical murder with which he is charged in this indictment, and said civil war and insurrection then continuing to exist in said district, and said defendant having pleaded not guilty to said charges and specifications; after maturely considering the evidence, said court found the defendant not guilty, and thereupon did honorably acquit him of said charge, &c.

To this plea the attorney general filed a demurrer, upon which no action appears to have been taken by the court; it must, therefore, now be regarded as having been abandoned.

The attorney general for the State filed a replication to the plea, in which it is alledged there is no record of said supposed acquittal, and if any such trial was had, the same was not had during the continuance of any war, invasion, or rebellion, and therefore the same was unauthorized, illegal, and void; and if any such trial was had, the same was had and obtained by fraud and collusion with the military authority, and that all the proceedings of said military court were
66 for the purpose and intent of shielding the defendant from the punishment justly due his crime, &c.

To this replication the defendant filed a demurrer which was sustained by the court, and the attorney general allowed to file another replication, which he done traversing the allegations of the plea, an issue was made, and the cause submitted to a jury who rendered a verdict in favor of the defendant. Thereupon the court pronounced judgment, that the defendant be discharged, &c., from which the attorney general for the State has appealed in error to this court.

Various and interesting questions have been presented in elaborate and able arguments, but in the view we have taken of the case, the main question, and the one which is in our opinion decisive of the case arises upon the demurrer of the defendant to the replication filed by the attorney general. The demurrer reaching back to the first defect in pleadings, it is insisted the matters alledged in the plea taken as true upon the demurrer, do not constitute a bar to this prosecution.

The plea in substance is that the defendant, while in the military service of the United States, and subject to the articles of war, was
67 charged, tried, and acquited of the same murder, with which he is charged in this indictment by a court martial convened under the laws of the United States during the existance of a civil war and instruction.

The counsel for the defendant relies upon the 30th section of an act of Congress approved March 3rd, 1863, as conferring jurisdiction upon the court-martial to try and punish the defendant for the crimes of murder, the provisions of which are as follows, (to wit:) "that in time of war, insurrection, or rebellion, murder, assault and battery with intent to kill, manslaughter, mayhem, wounding by shooting with intent to commit murder, robbery, arson, burglary, rape, assault and battery with intent to commit rape, and larceny, shall be punishable by the sentence of a general court-martial or military commission when committed by persons who are not in the military service of the United States, and subject to the articles of war, and the punishment of such offences shall never be less than those inflicted by the laws of the State, Territory, or District in which the offence may have been committed."

Upon the part of the State it is insisted that Congress has no power under the Constitution of the United States to declare murder

68 a crime, or to provide for the punishment of a person guilty of murder under the laws of a State, and therefore the court-martial had no legal power to try or punish the defendant for the crime.

We do not deem a settlement of this question necessary to a determination of this cause, but we may nevertheless express the opinion that the provisions of this section fall clearly within the provisions of the Constitution conferring upon Congress the power "to make rules for the government of the land and naval forces," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," Art. 1, s. 8, not as a statute creating or defining crimes or to enforce the laws of the State, or providing for the trial and punishment of offenders against such laws, but as a means necessary and proper for the government of the military forces of the United States and the preservation of good order and discipline in the army.

Then assuming, as we do, that Congress may provide for the punishment of any or all acts criminal or otherwise, which it may deem prejudicial to the good order and discipline of the army, and
69 in such manner as it may deem proper, when committed by persons in the military service of the United States and subject to the articles of war, how does this case stand? The laws of Tennessee define murder; declares it a crime, and provides for its punishment. The power of the State to pass such laws is unquestioned.

The United States have provided for the punishment of murder and other offences when committed by persons in the military service of the United States and subject to articles of war during the existence of a civil war, insurrection, or rebellion, and this, we think, was in the exercise of a power conferred by the Constitution of the United States.

The government of the United States and that of the State of Tennessee, are each within its sphere separate and distinct sovereignties. Each may, and has, provided for the punishment of offences against its own laws, but neither can, by merely providing for the punishment of offenders against its laws, deprive the other of the right or the power to punish offences against its laws, and the mere fact that the same act may be an offence against the laws of both, can make no difference. The act of Congress was not designed, neither could it operate to provide a punishment for an offence against the
70 laws of the State. One sovereign may not administer the criminal laws of another, or oust another of its jurisdiction to try and punish an offender against its laws by punishing the same act. Murder is an offence against the laws of Tennessee, whether the perpetrator be a citizen or soldier; whilst it is only an offence against the laws of the United States when committed in time of civil war, insurrection, or rebellion, and when the perpetrator is in the military service of the United States and subject to the articles of war.

It is insisted for the defendant that to subject the defendant to this

prosecution after he has been tried and acquitted for the same alledged murder, is in violation of that provision of the Constitution of the United States which declares "Nor shall any person be subject for the same offense to tried, put in jeopardy of life or limb." Now, is a party liable to be twice punished for the same act, or would a double punishment for the same act be in violation of that provision of the Constitution of the United States.

This question has been several times before the Supreme Court of the United States.

The case of Fox *vs.* The State of Ohio, 5th How. 410; 16th
71 Curtis, 447, decided in 1846, was an indictment in the State Court of Ohio, for passing with fraudulent intent a base and counterfeit coin in the similtude of a good and legal dollar, originating under a statute of Ohio, containing the following provisions, to wit: "That if any person shall counterfeit any of the coins of gold, silver, or copper, currently passing in this State, or shall alter or put off counterfeit coin or coins, knowing them to be such," &c., "every person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be imprisoned in the penitentiary and kept at hard labor not more than fifteen nor less than three years." The accused was convicted, and, upon the cause being removed into the Supreme Court of Ohio, the judgment was affirmed. Subsequently a writ of error was awarded, and the cause removed into the Supreme Court of the United States, where it was insisted for the plaintiff in error that the statute of Ohio was repugnant to the 5th and 6th clauses of the 8th section of the 1st article of the Constitution of the United States by which Congress is clothed with the power to coin money, regulate the value thereof, and of foreign coin, and to
72 provide for the punishment of counterfeiting ths current coins of the United States.

Judge Daniel, in delivering the opinion of the court, says: "It has been objected on behalf of the plaintiff in error that if the State could inflict penalties for the offence of passing base coin, and the federal government should denounce a penalty against the same act an individual under these separate jurisdictions might be liable to be twice punished for the one and the same crime, and that this would be a violation of the fifth article to the amendments to the Constitution declaring that no persons shall be subject for the same offence to be twice put in jeopardy of life or limb, conceding for the present that Congress should undertake, and could rightfully undertake to punish a cheat perpetrated between citizens of a State, because an instrument in effecting that cheat was a counterfeited coin of the United States, the force of the objection sought to be deduced from the proposition is not perceived, for the position is itself without real foundation.

The prohibition attended to as contained in the amendments
73 to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the State governments in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference

with the rights of the States, and of their citizens. Such has been the interpretation given to these amendments by this court in the case of Baron *vs.* The Mayor and City Council of Baltimore, 7th Pet. 243, and such indeed is the only rational and intelligible interpretation which these amendments can bear, since it is neither probable nor credible that the States have anxiously insisted to ingraft upon the federal constitution restrictions upon their own authority, restrictions which some of the States regarded as the sine qua non of its adoption by them. It is almost certain that in the benignant spirit in which the institutions, both of the State and federal systems, are administered. An offender who should have suffered the penalties denounced by the one, would not be subject a second time to punishment by the other for acts essentially the same, unless, indeed, this might occur in instances of peculiar necessity, or where
74 the public safety demanded extraordinary rigor. But were a contrary course of policy and action either probable or usual, this would by no means justify the conclusion that offences falling within the competency of different authorities to restrain or punish them would not properly be subjected to the consequences which those authorities might ordain and affix to their perpetrators.

The same question was again brought to the attention of the Supreme Court of the United States in the case of Moore *vs.* The People of Illinois, 14th How. 13; 20th Curtis, 6, decided in 1852.

In that case the plaintiff in error was indicted and convicted under the criminal code of Illinois for harboring and secreting a negro slave, and it was insisted that the statute upon which the indictment was founded was void, because in conflict with the provisions of the Constitution of the United States in relation to fugitives from labor, and with the acts of Congress upon the same subject, and also because it subjected the delinquent to a double punishment for the same offence, inasmuch as the act was punishable under the
75 laws of Congress. Judge Grier, in delivering the opinion of the court, said:

"But admitting that the plaintiff in error may be liable to an action under the same acts of harboring and preventing the owner from retaking his slave, it does not follow that he would be twice punished for the same offence. An offence, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace in consequence of the same act, and may be said, in common parlance, to be twice punished for the same offence.

Every citizen of the United States is also a citizen of a State or Territory. He may be said to owe allegiance to two soverigns, and may be liable to punishment for an infraction of the laws of either.

The same act may be an offence or transgression of the laws of both * * * * * * yet it cannot be truly averred that the offender has been twice punished for the same offence, but that by one act he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by

the other; consequently, this court has decided, in the case of
76 Fox *vs*, The State of Ohio, 5th H., 432, that a State may punish the offence of uttering or passing false coin as a cheat or fraud practied on its citizens, and in the case of the United States *vs.* Marigold, 9th How. 560, that Congress, in the proper exercise of its authority, may prescribe the same act as an offence against the United States."

Bishop, in his work on Criminal Law, Vol. 1, S.S. 144, 145, 146, says: "Some acts violates the duties due both to the United States and to a particular State. Some of these acts, moreover, are made offences against both by the positive laws of each on this subject. The doctriue probably is, that whenever Congress has the power to make a particular thing punishable as a crime against the United States, it can declare its legislation exclusive of all other law tendering the matter; but this proposition is not quite clear on principle, and be the proposition correct or not, if the statute of the general government, neither in its terms nor by necessary implication, excludes the State law; the authority of the State in the premises is not superseded." Then, after quoting from the opinion in the case of Moore *vs.* The People of Illinois, before referred to, the author says: "These views are, in substance, the per-
77 vailing ones."

The act of Congress under which the defendant was arraigned and tried is a part of the military law of the United States designed to operate only in time of civil war, insurrection or rebellion, and then only upon persons in the military service of the United States and subject of the articles of war. Military law is entirely different from martial law; while the latter has been said to be in fact no law, the former is defined "to be a code of rules and ordinances prescribed by competent authority for the government of the military State, considered as a distinct community, and in the United States, is chiefly statutory."—1st Bishop, Cr. Law. S.S., 44, 45.

The military courts hold that "a former aquittal or conviction of an act by a civil court is not a good plea before a court-martial on charges and specifications covering the same act." Upon this subject it is said, in a very valuable work entitled "Military Law and Court Martial," by Bennett, on pages 100, 101, and 102: "The whole ground is covered by the incidents of the trial of Captain Howe. He was charged with conduct prejudicial to good order and military discip-
78 line in cruelly beating, kicking, and maltreating a private soldier belonging to his command, on the 6th day of Decem., 1839, and with this aggravation, all of which cruelty did cause the death of said private James Jones, of troop G, second dragoons. The court-martial convened in April, 1840. The second special plea in bar of trial presented by the accused was to the effect that the charges against him were not proper to be tried by a court-martial, but only by a civil court, and that the offence, if committed at all, was committed within the county of St. Johns, E. F., and that the Superior Court of the eastern district of Florida had jurisdiction in said offence. The court sustained this second plea, and decided that

they could not take cognizance of the offence for the trial of which court was convened. The commanding general disapproved this decision, inasmuch as the unmilitary conduct charged ought to have been tried by the court-martial, leaving the homicide to be tried by the civil tribunal. Out of respect to the civil authority, the commanding general deemed it proper to suspend all proceedings in the case until the decision of the civil court should be made known. Captain H. would, notwithstanding, be subject to trial before a court-martial for any breach of the military law. On the 20th of Oct., 1841,

79 Captain H. was tried before the court of Florida upon the indictment for manslaughter, which had been found against him, and was, by the verdict of the petit jury and the judgment of the court thereof, acquitted.

The court-martial having been suspended in its proceedings and the impediment to the further military prosecution, the officer being in custody of the civil authorities at the time, having been removed, the court was [was] ordered to reassemble, and met on the 10th of May, 1842; the accused now pleaded in bar his arraignment, trial, and aequittal, on the before-mentioned indictment for manslaughter, showing an authenticated transcript of the record of the trial and acquittal in the court of Florida.

The court-martial would not admit the validity of such plea, and proceded to trial. The accused was found guilty, and sentenced to be suspended from rank, pay, and emoluments for twelve months.

The proceedings, findings, and sentence were duly approved and carried into execution.

In his comments, the attorney general says: Assault and battery and homicide are violations of the municipal laws of the place where committed, to be tried and punished by the proper tribunal of the State or Territory where peace is broken and laws offended;

80 but the same acts being done by an officer or soldier of the army of the United States, over and above the breach of the local law, is a breach also of the law of the United States in violation of the rules and articles for the government of the armies of the United States.

In such a case the offender is punishable both as a citizen, subject to the municipal law of the place, and also as a soldier or officer, subject to the military law of the United States. Such double accountability to two different jurisdictions, and to different and double punishments for the same act, making two different offences, is settled to be lawful by the decission of the Supreme Court of the United States in the case of Moore *vs.* The State of Illinois; that is to say, the rule of the military law which decides that an officer or soldier, though tried on the act of killing his superior officer, for murder, by the civil magistrate, is not the less liable afterward for mutiny by the military law, is in complete accordance with established rules of common civil jurisprudence."

81 It will be seen that, according to these authorities which we have extracted somewhat at length, both the civil and military tribunal of the United States are in harmony in holding that a party may be subjected to different and double punishment for the same

act, making two different offences, and that the same act makes two different offences when it is in violation of the laws of a State and also of the laws of the United States, and consequently subjecting the party to double punishment for the same act making two offences, cannot be said to be in violation of the Constitution of the United States by placing the party twice in jeopardy for the same offence.

The fact the offence may be distinguished by the same name, and the punishment prescribed by the laws of both governments the same case makes no difference.

The act of Congress under consideration declares that the punishment of such offences as therein enumerated shall never be less than those inflicted by the laws of the State, Territory, or district in which the offence may have been committed.

82 It cannot be questioned but that Congress may have prescribed any other or different punishment for any or all of said offences. Suppose Congress had seen proper to have provided for the infliction of a small fine only upon the murderer upon his conviction before a military tribunal, could it in any just sense be said that he had, upon the payment of a fine, atoned for the violation of the law of a sovereign State, the penalty for the violation of which is death?

Without pursuing the subject further, we are constrained by these authorities, contrary to our preconceived opinion, to hold that the matters stated in the defendant's plea constitute no bar to this indictment.

Other questions have been presented in argument, but we do not deem it necessary to extend this opinion by noticing them in detail, inasmuch as they cannot change the result.

It follows the judgment of the Circuit Court erroneous, and must be reversed.

The demurrer will be allowed to the plea of defendant, and the cause remanded with leave to defendant to plead over to the indictment.

HAWKINS, *Judge.*

83	Bill of costs in court below, (see page 49)		$208 58
	Bill of costs in Supreme Court, State tax ..	$3 50	
Cl'k Patterson, receiving and filing record, 75; 6 dockets, 10c. ea., 60c.; 3 recognizance, 25 ea., 75c.; 3 securities of record, 25 ea,, 75; judgment, 75; application for writ of error, 25; filing petition for writ of error, 25; filing writ of error, 25; order for allowing writ of error, 650 words, 10c. per hun., 65c.; taxing and entering bill of costs, 50		5 50	
Transcript to the United States Supreme Court, 19,090 words, $19 09		19 09	
Certificate and seal, 50c		50	
			29 09
			$237 17

STATE OF TENNESSEE:

I, M. L. Patterson, clerk of the Supreme Court for the eastern division of the State, at Knoxville, do hereby certify that the foregoing is a full, true, and perfect transcript copy of all the record, papers, and proceedings, had in the above-named cause, wherein the State of Tennessee is plaintiff in error and Samuel E. Rankin is defendant in error, for the murder of one John Thornhill,
84 lately determined in said [said] Supreme Court, as the same now remains and appears of record and on file in my office.

Given under my hand and seal of said court, at office, in the city of Knoxville, this November 25th, 1867.

[SEAL.] M. L. PATTERSON, *Clerk.*

O

Supreme Court of the United States.

December Term, 1870.—No. 109.

SAMUEL E. RANKIN, Plaintiff in Error,

vs.

THE STATE OF TENNESSEE.

ROBERT M. BARTON,
HORACE MAYNARD,
For Plaintiff in Error.

McGill & Witherow, Printers and Stereotypers, 1107 E street, Washington, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1870.

SAMUEL E. RANKIN, Plaintiff in error,
vs.
THE STATE OF TENNESSEE.
} No. 109.

BRIEF FOR PLAINTIFF IN ERROR.

The plaintiff in error, with eleven others, was indicted of murder in the circuit court of Jefferson county, Tennessee, and upon his arraignment pleaded *autrefois acquit*, in substance as follows:

That at the time the murder was committed he was in the military service of the United States, with the rank of first lieutenant of cavalry, bound to obey all lawful orders of his superiors, amenable to the penalties of the law, and subject to the jurisdiction of general courts-martial, established by the laws of the United States for the punishing of offenders against law, there being at that time an insurrection and civil war in that military district; that afterwards, in the city of Chattanooga, he was arraigned before a general court-martial upon the charge of murder, was tried, acquitted, and discharged. Then follow the usual averments of identity. (pp. 5, 6.)

This plea was adjudged good in law, (pp. 7 and 19,) and found true in fact, (p. 21,) and judgment accordingly.

The supreme court of the State, on appeal by the attorney general, reversed the judgment of the circuit court, and remanded the cause for trial, (p. 25,) "upon the merits of the

indictment," and, deeming it a proper subject for the revision of this tribunal, under the 25th section of the judiciary act, allowed the present writ of error.

1. The proceeding by court-martial was authorized by the 30th section of an act of Congress approved March 3, 1863, entitled "An act for enrolling and calling out the national forces and for other purposes." "In time of war, insurrection, or rebellion, murder, assault and battery with an intent to kill, manslaughter, mayhem, wounding by shooting or stabbing with an intent to commit murder, robbery, arson, burglary, rape, assault and battery with an intent to commit rape and larceny, shall be punishable by the sentence of a general court-martial or military commission, when committed by persons who are in the military service of the United States or subject to the articles of war, and the punishments for such offenses shall never be less than those inflicted by the laws of the State, Territory, or district in which they may have been committed." (12 Stats. at Large, 736.)

The punishment contemplated by this act was obviously not intended as the penalty for breach of military discipline and good order among the troops, but as a prevention of crime and a protection of society, by promptly meting out justice against offenders on the one hand; and on the other as a security against criminal prosecutions before the ordinary civil tribunals of the land, which would necessarily operate to the withdrawal of the accused from the control and authority of the United States. The several crimes were to be punished as civil, not as military offenses. Hence the reference to the local laws for the measure of the infliction. Such legislation falls clearly within the power "to declare war;" "to raise and support armies;" "to provide for calling forth the militia to execute the laws of the Union and suppress insurrections;" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." (Const., Art I, sec. 8.)

2. Having been once "put in jeopardy of life," under this law, for the identical murder with which he is now charged,

can he, consistently with Amendment, Art. V, Const., be again put in jeopardy of his life, by being subjected to trial, as adjudged by the Supreme Court of the State of Tennessee?

The cases in authority with the court are Fox *vs.* The State of Ohio, (5 How., 410;) The United States *vs.* Marigold, (9 How., 560;) Moore *vs.* The People of Illinois, (14 How., 13.)

The first two cases decide that offenses against the coin are punishable either by State or by federal law. The last case decides that a State might punish the harboring and secreting of a slave, as an offense against her own peace and policy, and the United States might punish it as an offense against the owner of the slave.

The case of Captain Howe, cited from Benet, merely decides that the same act may be a breach of civil and of military law; at once a violation of the criminal code and of the rules and articles of war; a homicide, and conduct prejudicial to good order and military discipline, and punished accordingly.

Neither of these cases meets the present inquiry.

Because either government might punish, it in nowise follows that both might.

3. Prior to the formation of our Government, the rule of the English common law was well established, and had stood the shock of centuries, that no one could be twice put in jeopardy for the same offense. It was a principle of criminal law coeval with the law itself.

In Darley's case, (4 Coke Rep., 40,) Wetheral brought an appeal against Darley for murder. Defendant pleaded not guilty; was found guilty of homicide, and had his clergy. He was then indicted for murder, and pleaded his former conviction in the appeal at the suit of Wetheral, and the plea was adjudged a good one. This was in the 25th Elizabeth. So in the case of Vaux, (33 Elizabeth, 4 Coke Rep., 45,) "It was resolved by Lord Wray, Sir Thomas Gawdy, Clench, and Fenner, Justices, that the reason of *autrefoits acquit* was, because where the maxim of the common law is, that the life of a man shall not be twice put in jeopardy for one and the same offense, and that is the reason and cause that

autrefoits acquitted or convicted of the same offense is a good plea."

Or, in the language of Blackstone, "Hence it is allowed, as a consequence, that when a man is once fairly found not guilty upon any indictment or other persecution, before any court having competent jurisdiction of the offense, he may plead such acquittal in bar of any subsequent accusation for the same crime." (4 Black. Com., 335.)

Or, in the language of Mr. Chitty, "No man shall be placed in peril of legal penalties more than once upon the same accusation." (1 Crim. Law, 452.)

So completely was this principle inwrought into the judicial structure both of England and America, that prior to the adoption of our Constitution neither Englishmen nor Americans appear ever to have thought of asking, in any of their charters of liberty, that there should be any safeguard against being twice tried for the same offense.

It was not until our novel system was organized, whereby, in the language of this court, (5 Wheat., 33,) "every citizen owes a double allegiance, enjoying the protection and participating in the government of both the States and the United States," and subject to the penal legislation of both, that such a safeguard was deemed necessary. Hence the fifth amendment; and hence a similar provision in the several State constitutions.

In the cases already cited from this court, the principle is never left out of sight, as one under no circumstances to be violated.

In Fox *vs.* The State of Ohio, the late Attorney General, arguing for the defense, says: "The double prosecution never can extend to cases of life and limb, for that is forbidden, as well to the States as to the General Government, by the fifth article of the Amendments to the Constitution." The counsel for the plaintiff refers to it as the "great safeguard of the citizen; one which is also a fundamental principle of the common law. It has already pervaded its criminal jurisprudence."

Mr. Justice Daniel, in delivering the opinion of the court,

says, "It is almost certain that, in the benignant spirit in which the institutions both of the State and federal systems are administered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to punishment by the other for acts essentially the same."

And Mr. Justice McLean, dissenting, says: "Nothing can be more repugnant or contradictory than two punishments for the same act. It would be a mockery of justice and a reproach to civilization. It would bring our system of government into merited contempt." "There cannot, in the nature of things, be two punishments for the same act."

Mr. Justice Washington, delivering the opinion of the court in Houston *vs.* Moore, says, (5 Wheat., 23:) "To subject them (the citizens) to the operation of two laws upon the same subject, dictated by distinct wills, particularly in a case inflicting pains and penalties, is, to my apprehension, something very much like oppression, if not worse." Mr. Justice Johnson, *Ib.*, 34, and Mr. Justice Story, *Ib.*, 75, convey the same doctrine in language equally clear. Hence, in a case of concurrent jurisdiction between the State and federal courts, "the sentence of either court, either of conviction or acquittal, might be pleaded in bar of the prosecution before the other, as much so as the judgment of a State court, in a civil case of concurrent jurisdiction, may be pleaded in bar of an action for the same cause, instituted in a circuit court of the United States." (*Ib.*, 31.)

In Antonio's case, (3 Wheat. Crim. Cases, 508,) the court of South Carolina, asserting State jurisdiction over offenses against the coin, say: "As to the second objection, 'a man may be twice tried,' this could not possibly happen; first, because it is the established *comitas gentium*, and is not unfrequently brought into practice, to discharge an accused of a crime who has been tried by a court of competent jurisdiction. If this prevails among nations who are strangers to each other, could it fail to be exercised with us, who are so intimately bound by political ties? But a guard yet more

autrefoits acquitted or convicted of the same offense is a good plea."

Or, in the language of Blackstone, "Hence it is allowed, as a consequence, that when a man is once fairly found not guilty upon any indictment or other persecution, before any court having competent jurisdiction of the offense, he may plead such acquittal in bar of any subsequent accusation for the same crime." (4 Black. Com., 335.)

Or, in the language of Mr. Chitty, "No man shall be placed in peril of legal penalties more than once upon the same accusation." (1 Crim. Law, 452.)

So completely was this principle inwrought into the judicial structure both of England and America, that prior to the adoption of our Constitution neither Englishmen nor Americans appear ever to have thought of asking, in any of their charters of liberty, that there should be any safeguard against being twice tried for the same offense.

It was not until our novel system was organized, whereby, in the language of this court, (5 Wheat., 33,) "every citizen owes a double allegiance, enjoying the protection and participating in the government of both the States and the United States," and subject to the penal legislation of both, that such a safeguard was deemed necessary. Hence the fifth amendment; and hence a similar provision in the several State constitutions.

In the cases already cited from this court, the principle is never left out of sight, as one under no circumstances to be violated.

In Fox *vs.* The State of Ohio, the late Attorney General, arguing for the defense, says: "The double prosecution never can extend to cases of life and limb, for that is forbidden, as well to the States as to the General Government, by the fifth article of the Amendments to the Constitution." The counsel for the plaintiff refers to it as the "great safeguard of the citizen; one which is also a fundamental principle of the common law. It has already pervaded its criminal jurisprudence."

Mr. Justice Daniel, in delivering the opinion of the court,

says, "It is almost certain that, in the benignant spirit in which the institutions both of the State and federal systems are administered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to punishment by the other for acts essentially the same."

And Mr. Justice McLean, dissenting, says: "Nothing can be more repugnant or contradictory than two punishments for the same act. It would be a mockery of justice and a reproach to civilization. It would bring our system of government into merited contempt." "There cannot, in the nature of things, be two punishments for the same act."

Mr. Justice Washington, delivering the opinion of the court in Houston *vs.* Moore, says, (5 Wheat., 23:) "To subject them (the citizens) to the operation of two laws upon the same subject, dictated by distinct wills, particularly in a case inflicting pains and penalties, is, to my apprehension, something very much like oppression, if not worse." Mr. Justice Johnson, *Ib.*, 34, and Mr. Justice Story, *Ib.*, 75, convey the same doctrine in language equally clear. Hence, in a case of concurrent jurisdiction between the State and federal courts, "the sentence of either court, either of conviction or acquittal, might be pleaded in bar of the prosecution before the other, as much so as the judgment of a State court, in a civil case of concurrent jurisdiction, may be pleaded in bar of an action for the same cause, instituted in a circuit court of the United States." (*Ib.*, 31.)

In Antonio's case, (3 Wheat. Crim. Cases, 508,) the court of South Carolina, asserting State jurisdiction over offenses against the coin, say: "As to the second objection, 'a man may be twice tried,' this could not possibly happen; first, because it is the established *comitas gentium*, and is not unfrequently brought into practice, to discharge an accused of a crime who has been tried by a court of competent jurisdiction. If this prevails among nations who are strangers to each other, could it fail to be exercised with us, who are so intimately bound by political ties? But a guard yet more

sure is to be found in the 7th (5th) article of Amendments to the federal Constitution." COLCOCK, J.

"Another argument of great importance is, that an offender might be twice tried for the same offense. But if the courts of the United States have a concurrent jurisdiction over this crime with this court, then must either court allow of the plea of *autrefois acquit*, which will be a good bar to a second prosecution, because a determination in a court having competent juristiction must be final and conclusive on all courts of concurrent jurisdiction." (1 Leach, 160. GRIMKE, J.)

These authorities, and an endless series which might be cited, establish the principle of immunity to the citizens against repeated vexation by criminal prosecution for one and the same criminal act, as a principle of the common law, of our federal and State constitutions, and of the jurisprudence of civilization itself.

4. The court of Tennessee, however, holds that, in this instance, the principle is not violated, because, although there was but a single homicide, there were, in fact, two separate and distinct offenses: one against the laws of the State, the other against the laws of the United States. The language, after citing the cases already referred to, is: "Both the civil and military tribunals of the United States are in harmony in holding that a party may be subjected to different and double punishment for the same act, making two different offenses, when it is in violation of the laws of a State and also of the laws of the United States; and consequently that subjecting the party to double punishment for the same act, making two offenses, cannot be said to be in violation of the Constitution of the United States, by placing the party twice in jeopardy for the same offense. The fact that the offense may be distinguished by the same name, and the laws prescribed by the laws of both Governments the same, can make no difference." (P. 35.)

If this be so, the constitutional provision is of little value as a protection to the citizen, and ours is the only civilized

Government on earth which inflicts a second time the same penalty to life or limb upon the same criminal charge.

The constitutional inhibition does not extend to minor punishments nor to the superadding of civil damages to penal inflictions, and all instances of that character are out of place, either as argument or illustration.

So, too, we may leave out of the account all cases in which the same act violates sundry laws, and the offender is proceeded against under the diverse aspects of his transgression, as mayhem of the marshal and obstructing process in his hands by the same stroke. They are not within the range of the present inquiry.

Nor need we inquire into a class of artificial offenses *mala prohibita*, the necessities of organized society, as counterfeiting, violating the mail, and the like.

The crime of murder antedates society, and it is denounced by a sanction which follows man from age to age, and into every clime, requiring his life "at the hands of every man's brother." Every government, certainly every civilized government, reckons it among the darkest in the catalogue of crime. It is a black and terrible unit, admitting of no duality, subjecting to the most awful of punishments. Under our peculiar Government, is the citizen once fairly acquitted to be subjected a second time to the ordeal of a trial and the possibility of a conviction?

The court also say: "The Government of the United States, and that of the State of Tennessee, are both, each within its sphere, separate and distinct sovereignties. Each may, and has, provided for the punishment of offenses against its own laws; but neither can, by merely providing for the punishment of offenses against it laws, deprive the other of the right or power to punish offenses against its laws; and the mere fact that the same act may be an offense against the laws of both can make no difference. The act of Congress was not designed, neither could it operate, to provide a punishment for an offense against the laws of the State. One sovereign may not administer the criminal laws of another, or oust

another of its jurisdiction to try and punish an offender against its laws by punishing the same act." (P. 30.)

Let us take this deliverance by propositions, as delivered. The governments are sovereign, and, in their spheres, separate and distinct. Is this so in the sense here used? England and France are sovereign and separate. Now, can any single act be violative of the criminal law of each sovereign, so as to make the perpetrator amenable to the laws of each? The merest tyro in the law would not maintain such a proposition. It is not the death of the citizen of Tennessee that causes the offense to her sovereign power; but it is the violation of the mandate,-thou shalt not kill a reasonable creature in being whilst you are under the authority of my laws. It is this disobedience to the sovereign's command that constitues the offense. Hence, if a Tennessean is killed in Canada, although Tennessee has lost her citizen, no offense has been given to her soveignty; but the sovereignty of Canada is offended.

It is admitted that the federal Government and the States are sovereign in their spheres *in the American sense*, but it is utterly denied that they are independent sovereignties in the sense shown by the context of the opinion under examination.

All power is derived from the people. The true theory of the American Republic is, that though complex, it is but one Government. The people are the ultimate sovereigns, with this governmental sovereignty delegated by written constitutions, part to the federal and part to their State governments; and in theory, however it may be found in practice, there can be no conflict. For what the people have delegated to the United States Government they have withdrawn from the States. And what they have not so withdrawn, they have left with the States. Therefore, whilst I am at the same time a citizen of the State of Tennessee and of the United States, and owe allegiance to each, I am not so a citizen of both in regard to the same objects of sovereign power. Yet this is the unqualified proposition of the

Tennessee court, that I am so a citizen in regard to the self-same power.

The next proposition, that each government may provide for the punishment of offenses against its own laws, is true; so also is the other proposition, that one sovereignty cannot deprive the other of its right or power to punish offenses against its laws. These propositions will hold good with regard to England and France.

But the statement that "the mere fact, that the same act may be an offense against the laws of both can make no difference," would certainly sound strange in Westminster if announced of England and France. And yet if our State and federal Governments are entire and perfect sovereignties, then they stand on the same national footing, one towards the other, that England and France do.

Then, it is affirmed as correct American law, that upon any point where an act can by possibility violate a prohibitory law of the United States and of the State, as in the cases of counterfeiting and the like, the State is not absolutely sovereign. And in all cases where the United States constitutionally pass penal laws, prohibiting certain acts, and the States have like laws, the States act by permission, and not in defiance of the federal power.

But the court say: "The act of Congress was not designed, neither could it operate, to provide a punishment for an offense against the laws of the State." Most certainly not, if the State is an independent absolute sovereign power. But is the State such a power? Congress does not propose to punish the violations of the laws of the States, as States; yet it must not be forgotten that the United States is paramount, and the very end and aim of its creation was to protect, sustain, and invigorate the States, and must so frame her laws, and in the punishment of infractions of her own laws, must often punish the infraction of State laws, not directly, but incidentally.

But again, what is it that offends the sovereign power so as to give the right to prosecute? It is the contempt shown the sovereign's authority in disregarding his command pro-

hibiting the act in question. It is not the death of the citizen that offends sovereignty, else the killing of the Tennesseean in Canada would be indictable in Tennessee.

But it is the disregard of the sovereign's command, thou shalt not kill.

5. The argument so far has proceeded upon the hypothesis of a concurrent jurisdiction in the State and the federal tribunal. This, however, is by no means admitted. Bishop (Crim. Law, section 145) says: "The doctrine probably is, that whenever Congress has the power to make a particular thing punishable as a crime against the United States, it can declare its legislation to be exclusive of all other law touching the matter."

In Houston *vs.* Moore, (5 Wheaton, 25,) the court cites, with approval, the doctrine distinctly asserted in the *Federalist*, No. 82, "That the United States, in the course of legislation upon the objects intrusted to their direction, may commit the decision of causes arising upon a particular regulation to the federal courts solely, if it should be deemed expedient."

Has not Congress done this very thing in the act of March 3, 1863?

It was providing for a military force for service "in time of war, insurrection, or rebellion;" and to prevent the troops from being withdrawn from the authority of the United States to answer criminal charges, such offenses should "be punishable" by tribunals designated for that purpose. This was no less necessary for the protection of the soldiers from vexatious prosecutions either during the war or after its close.

At the same time provision is made for the protection of communities through which the armies might march, or in which they might be stationed, by prescribing for the punishment of offenses against life, chastity, and property; and that, too, with no less severity than the local laws of the region in which these crimes might be committed. As conduct unbecoming an officer and gentleman, or prejudicial to good order and military discipline, military offenses, no law was needed to punish. That had long been provided for. This was a provision for civil offenses, at a season when the ex-

igencies of the public service did not admit of the laws delay in favor of the culprit, any more than of the annoyance of spiteful and groundless prosecutions before angry and hostile courts and juries.

The condition of affairs in many parts of our country at the passage of the act, both in the field of active warfare and elsewhere, now a matter of history, is an unanswerable reason for holding the soldiers of the army amenable alone to the military tribunal, where, in theory at least, an officer, the Judge Advocate, could stand between them and injustice. Any other policy would have left them oftentimes at the mercy of a judicial mob. The purpose of Congress cannot be misunderstood.

Now, the question is, whose command, thou shalt not kill, did the plaintiff in error disregard? Certainly not Tennessee's, but that of the United States. The law of the land, which then formed the rule of his action, held him in subjection, and protected his life, was the military law of the United States. By that code he was liable to die, and by it he must live.

The power of Congress to take the citizen from the peaceable walks of civil life and put him into the military service of the Government is not questioned, nor is the power to pass laws for the government of the army questioned. The court of Tennessee, in the case at bar, has held the act of 1863 (ch. 75, sec. 3) constitutional, so far as soldiers in the service of the United States are concerned. Then Rankin was under the immediate control and power of the federal Government, and was, to all intents and purposes, subject to her laws. He was as effectually withdrawn from the power of the laws of Tennessee as if he had left her territory. He offended, if he offended at all, the sovereign power of the United States, and not that of Tennessee. He was not assuming to obey the laws of Tennessee; was not under her protection.

But suppose we are mistaken in this view—and it seems impossible that we can be—suppose that here the lines of sovereignty have converged, and that he is bound to hear the